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In the

Supreme Court of the United States

October Term, 1985

CITY OF PRIOR LAKE, MINNESOTA,
Appellant/Petitioner,

vs.

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY AND EDITH CROOKS,
Respondents,

and

UNITED STATES OF AMERICA,
Intervenor.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION TO CERTIORARI OF SHAKOPEE MDEWAKANTON SIOUX COMMUNITY AND EDITH CROOKS

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QUESTION PRESENTED FOR REVIEW

Whether a Minnesota Indian reservation that formed part of an unincorporated township was annexed by a Minnesota municipality corporation when the municipality's boundaries were extended to surround the reservation.

TABLE OF CONTENTS

	Page
Statement of the Case	1
Summary of Argument	5
Argument	6

TABLE OF AUTHORITIES

Cases:	**Page**
Bryan v. Itasca County, 426 U.S. 373 (1976)	6
Howard v. Commisioners of the Sinking Fund, 344 U.S. 624 (1953)	7
State of Minnesota v. City of White Bear Lake, 255 Minn. 28, 95 N.W.2d 294 (1959)	7

Constitutional and Statutory Provisions:

25 U.S.C. Sec. 476 (1982)	2
Minn. Stat., Sec. 414.031	1, 3, 7

STATEMENT OF THE CASE

The facts in this matter were the subject of a Stipulation before the United States District Court for the District of Minnesota. The Stipulation with its Exhibits appears at pages 36 through 74 of the Appendix to the Petition for Writ of Certiorari of the City of Prior Lake, Minnesota.

In 1972, the Minnesota Municipal Commission ("the Commission"), acting under the provisions of Minnesota Statutes, Sec. 414.031, altered the boundaries of Prior Lake, Minnesota. (Appendix to Petition for Writ of Certiorari of the City of Prior Lake, [hereafter, "A."], 40). In 1972, Prior Lake was a Village; it now is a City. Id. As a result of the Commission's action, the territory of the Village of Prior Lake was expanded to include approximately one-half of the territory that formerly lay within the unincorporated Township of Eagle Creek. Id. In the same proceedings before the Commission, another Minnesota municipality annexed the remainder of the territory that had lain within Eagle Creek Township, and as a consequence the Township ceased to exist. Id.

The Shakopee Mdewakanton Sioux Indian Reservation ("the Reservation") lay within the boundaries of Eagle Creek Township. In the instant litigation, the United States District Court for the District of Minnesota held, and the United States Court of Appeals affirmed, that the Reservation formed part of the Township. The City of Prior Lake ("the City") has not asked this Court to review that holding. As a result of the 1972 action of the Commission, the Reservation now lies within the exterior boundaries of the City.

The Reservation consists of three noncontiguous parcels of land, with a total area of approximately three hundred acres. The lands lie within territory that was ceded to the United States under a series of treaties in the mid-nineteenth century. A. 37. The three parcels were

purchased in 1890 and 1891 by the United States of America for the Mdewakanton Sioux in Minnesota. A. 38 - 39. The lands are held in trust for the Shakopee Mdewakanton Sioux Community ("the Community"), a Federally recognized Indian tribe. The Community exercises the authority of an Indian tribal government over the Reservation, under the provisions of a Tribal Constitution adopted and approved pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. Sec. 476 (1982). A. 41.

During the annexation proceedings in 1972, the Commission was aware that the territory with which it was dealing contained an Indian reservation. The Commission's Findings of Fact explicitly referred to the Reservation (A. 46), and the Commission's Order, in describing the new northern and western boundary of the City, contained the following provision:

> IT IS FURTHER ORDERED: That the following described property be consolidated with the property of the Village of Prior Lake to form a new Village of Prior Lake:
>
> That part of Eagle Creek Township lying Easterly and Southerly of the following described line: Beginning at the Southwest corner of the east 1/2 of Section 32, T115N, R22W; thence ...[through a series of metes and bounds calls]...; thence Northerly on said east line 1/4 mile to the north line of Indian reservation, thence in an easterly direction on said reservation 1/2 mile to the north and south 1/4 line;...
>
> A. 53 - 54

The Commission's Findings of Fact, Conclusions of Law, and Order reviewed each of the thirteen criteria set out in Minnesota Statutes, Sec. 414.031. On the basis of that review the Commission determined that the annexation was consistent with state law. No challenge has ever been raised before the Commission with respect to its authority to enter its 1972 Order.

During the period following the annexation, the City had only one election precinct, encompassing all of the City's lands. This situation obtained until July 18, 1983, when the City redrew its election precinct boundaries in response to the pressures of increasing population in the City. A 40-41. When it redrew the precinct boundaries, the Prior Lake City Council created three precincts, each of which explicitly excluded the lands of the Reservation. Id. Hence, if the new precinct arrangement were to have become effective, no resident of the Reservation could have voted in the City's elections.

On August 17, 1983, the Community and Edith Crooks, a member of the Community, filed this action in the United States District Court for the District of Minnesota, seeking injunctive and declaratory relief against the City's attempt to exclude residents of the Reservation from the City's elections, and from the City's treatment of Reservation residents in any manner differently than other City residents with respect to city services. Subsequently, the United States of America intervened on behalf of the Community, seeking substantially the same relief. The City answered, denying that the Reservation was included in the City, and it filed a counterclaim for a declaratory judgment to the effect that if the Reservation did in fact lie within the City, then all of the City's regulations and municipal codes applied with full force to the Reservation's lands and residents.

In the subsequent proceedings before the District Court, the City conceded that if the lands of the Reservation actually comprise part of the City, then the City has the obligation to permit Reservation residents to vote and receive services in a nondiscriminatory fashion. A. 21. The City did not submit any evidence or argument with respect to its counterclaim.

On September 23, 1983, the District Court preliminarily enjoined the City from excluding residents of the Reservation from the City's elections. On August 31, 1984, it declared that residents of the Reservation were entitled to vote in City elections and to receive all of the services afforded by the City to its other residents; at the same time, it dismissed the City's counterclaim. A 19 - 35. The City appealed the District Court's award of declaratory and injunctive relief, but not the dismissal of the counterclaim. On August 30, 1985, the United States Court of Appeals affirmed the decision of the United States District Court on all these points. A 1 - 16. The Petition for Certiorari which is the subject of this Brief in Opposition followed.

SUMMARY OF ARGUMENT

The decision of the United States Court of Appeals for the Eighth Circuit is in accord with the holdings of this Court and other federal courts with respect to the annexation of Federal lands. It does not conflict with any decision of any state or federal court, and it presents no question which has not been, but should be, settled by this Court. Indeed, had the Court of Appeals reached any decision other than the one it did reach, the logic of the result ultimately would leave large numbers of reservation Indians in Minnesota in a legal limbo, with no place to vote and no right to receive services from any subdivision of the State.

ARGUMENT

The City suggests that two questions are appropriate for review on Certiorari. First, it asks this Court to determine whether federal law and the law of Minnesota permitted the City to include the Reservation within the City's boundaries in 1972. Second, it suggests that this Court could and should decide the extent to which the City's civil and criminal jurisdiction extends to the lands and residents of the Reservation. The Respondents contend that neither law nor logic makes the first question appropriate for review by this Court; and the second question was never properly placed before either the District Court or the Court of Appeals.

As to the first question, the City's argument begins with the observation that, under this Court's holding in *Bryan v. Itasca County*, 426 U.S. 373 (1976), the ability of the City to regulate residents of the Reservation is different than is its ability to regulate other residents; and the City notes that its power to tax persons or property on the Reservation also is different than is its power elsewhere within its boundaries. From these observations, the City argues that in 1972 the City's boundaries could not have been changed to include the Reservation. The City forwards no authority for its argument, but simply asserts that since it lacks the same taxing and regulatory authority over the Reservation that it possesses with respect to other lands—

> Prior Lake and the State of Minnesota have the same Power to annex Indian lands that they do to annex the State of Iowa—none.
>
> Petition for Writ of Certiorari of the City of Prior Lake, at 10.

The Court of Appeals correctly noted that the force of such an argument—to the effect that Indian reservations somehow are "states within states"— was eliminated by this Court's decision in *Howard v. Commissioners of the Sinking Fund,* 344 U.S. 624 (1953). Under the doctrine of that case, Federal enclaves can be annexed by municipalities, so long as state law permits the annexation and the plenary jurisdiction of the Federal government over lands on a Federal enclave is not disturbed. No distinction between Indian reservation lands held in trust for Indian tribes and other Federally owned areas is suggested by the City, and the Respondents submit that none exists.

The Court of Appeals also was correct that neither of the *Howard* standards were offended by the 1972 action of the Commission. The Commission had, and pretended to have, no authority to change the jurisdictional matrix that pertains to the Reservation. The Commission simply followed the provisions of Minnesota law to the letter. In full knowledge that the lands which were before it included an Indian reservation, it reviewed the thirteen standards enumerated in Minnesota Statutes, Sec. 414.031, and concluded that annexation was appropriate. It entered its Findings of Fact, Conclusions of Law, and Order on the basis of that conclusion, making no exception or exclusion with respect to the Reservation; no challenge was brought before the commission respecting its decision.

The City submits, however, that a fourteenth criterion, implicit in Minnesota law—to the effect that an annexed area must "be so conditioned as properly to be subjected to city government"—could not be met by the annexation of the Reservation's lands. This criterion derives from *State of Minnesota v. City of White Bear Lake,* 255 Minn. 28, 95 N.W.2d 294 (1959); and, interpreted as the City wishes it to be, it would mean that, in Minnesota, all Indian reservation lands would be left behind in all cases where the boundaries of political subdivisions of the State were changed and an Indian reservation is involved.

In other words, were the first question which the City wishes to submit to the Court to be answered as the City wishes, the result would be the creation first of a remnant of a former Township that would lie outside of all local governmental boundaries in Minnesota; and over time, the result might be a crazy quilt of Indian lands which formerly were part of municipalities but no longer continue to be. Plainly, the achievement of such results is not an appropriate use of the Writ of Certiorari.

As to the second question which the City would place before the Court, the Respondents strongly submit that no such question was decided either by the District Court or the Court of Appeals. The City's counterclaim for a declaratory judgment with respect to the reach of its ordinances on the Reservation was dismissed by the District Court, and the dismissal was not appealed. There thus is no question in this case concerning the effect of the City's ordinances that is appropriate for this Court's review.

For all of the above reasons, the Respondents respectfully request that the City's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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